

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

ORDER GRANTING DEFENDANT
BLOCK DRUG COMPANY,
INC.'S MOTION FOR SUMMARY
JUDGMENT

This document relates to:

*Clarence Jones, Jr., et al. v.
Block Drug Company, Inc., et
al. Case No. 3-cv-3124.*

Block Drug Company, Inc. ("Block") moves for summary judgment pursuant to Fed. R. Civ. P. 56(c). Block requests this court to dismiss plaintiffs' complaint on the ground that plaintiff Clarence Jones, Jr. did not ingest a PPA-containing product manufactured by Block. Plaintiffs do not oppose the motion.

Plaintiffs, Clarence Jones, Jr. and his wife, Linda Jones, allege that Mr. Jones sustained a stroke on June 15, 1991 as a result of ingesting a PPA-containing product manufactured by Block. Block asserts that only two formulations of its over-the-counter products ever contained PPA--BC Cold Powder and BC Cold

ORDER

1 Powder Non-Drowsy. See Declaration of Stephen McAuliffe
2 ("McAuliffe Dec."), ¶ 11. Each was marketed in a predominately
3 red package. *Id.*

4 In their depositions, Mr. and Mrs. Jones testified that the
5 product Mr. Jones ingested came in a predominately blue and white
6 package. In fact, Mrs. Jones brought to her deposition an example
7 of the package of the product her husband ingested. See
8 Declaration of John Powers, Ex. A. The product was "Original
9 Formula BC Fast Pain Relief for Headaches, Body Aches, Fever"
10 ("BC Headache Powder"). BC Headache Powder is the only Block
11 product that was ever sold in a blue and white package. McAuliffe
12 Dec., ¶ 6. Mr. Jones also testified that the product he ingested
13 "had two in a pack." Deposition of Clarence Jones, Jr., p. 40:1-
14 8. BC Headache Powder is the only Block product sold in packaging
15 containing two doses. McAuliffe Dec., ¶ 12. BC Headache Powder
16 has never contained PPA. *Id.* at ¶ 9.

17 Mr. and Mrs. Jones' testimony establishes that Mr. Jones
18 ingested BC Headache Powder--a product that never contained PPA--
19 prior to his alleged stroke. Moreover, plaintiffs have failed to
20 oppose Block's motion for summary judgment. Per Civil Rule
21 7(b)(2) of the Western District of Washington, "[i]f a party
22 fails to file papers in opposition to a motion, such failure may
23 be considered by the court as an admission that the motion has
24 merit."

25 Accordingly, the court hereby GRANTS Block's motion for
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ORDER

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4 summary judgment and plaintiffs' complaint is dismissed with
5 prejudice.

6 DATED at Seattle, Washington this 26th day of October, 2007.

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8 BARBARA JACOBS ROTHSTEIN
9 UNITED STATES DISTRICT JUDGE
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ORDER